IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2172 OF 2002

IN

SUIT NO. 2745 OF 2002

New Blue Flame Premises
Co-operative Society Ltd., .. Plaintiffs.

vs.

M/s. Blue Flame Gas Services
& Ors. .. Defendants.

Mr. Y.H. Muchhala, Sr. Adv., with Ms. H.I. Advani i/by Segar Ahmed for the plaintiffs.
Mr. P.G. Sawant, A.G.P. for defendant no. 8.
Mr. Shivram Krishnan i/by M.K. Dave for defendant nos. 1 & 6.

CORAM : S.U.KAMDAR, J.

DATE : 19th August, 2005.

P.C.

. The plaintiffs in the present case are a cooperative society of the flat purchasers in respect of the building known as Blue Flame situated at S.V. Road, Bandra, Bombay. The said society is duly registered. Defendant nos. 1 and 6 are the original lessees of the said land and had entered

into an agreement with the defendant nos. 2 to 5 and 7 being the partners of M/s. Blue Flame Gas Services and the said firm had entered into an agreement for development of the said property in favour of M/s. Mehta Shah Constructions Co. for construction of a building on the said plot of land. The building is constructed in 1973-74 and all the flats are sold to the various members of the plaintiff society. It is the case of the plaintiffs that conveyance in respect of the said plot of land is yet not given and the portion of the land of plot bearing No. 516-A which is agreed to be conveyed to the plaintiff is sought to be acquired by the State who is defendant no. 8 in the present proceedings. It is the case of the plaintiffs that in view of the fact that the entire consideration has been paid by the flat purchasers to the defendant nos. 1 to 7, they are not entitled now to any benefits of the said plot of land which ought to have been conveyed to the plaintiffs herein.

2. On the other hand, the learned counsel appearing for defendant nos. 1 and 6 states that the property could not be conveyed because there is no permission issued by the Collector and it is the obligation of the builder namely, M/s. Mehta Shah Construction, defendant nos. 2 to 5 to obtain such permission from the Collector. It is however, further contended that in view of the aforesaid

permission not being granted by the Collector, the present suit is not maintainable. He also contends that cause of action for obtaining conveyance arose in 1974-75 and, therefore, the plaintiffs are not entitled to any relief in the present notice of motion.

3. I am of the opinion that the question as to whether the plaintiffs were required to obtain permission from the Collector or whether the Collector was required to issue permission or not are the issues which are to be determined t the final hearing of the suit. At the same time the defendant nos. 1 and 6 having conferred right to the defendant nos. 2 to 5 to construct a building and convey the property to the plaintiffs, they have no right to claim any amount either by way of compensation or otherwise in respect of any portion of plot No. 516-A which has been agreed to be conveyed to the plaintiffs. In view of the aforesaid, I pass the following order:-

> Defendants nos. 2 to 7 shall not take any benefits either monetary or otherwise or in the nature of compensation from any party including the 8th defendant in respect of any portion of land being plot No. 516-A situated at Mahim Causeway, S.V. Road, Bandra (West), Mumbai 400 050.

4. Motion disposed of accordingly. However, there shall be no order as to costs.